



JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, February 8, 2006

10:45 a.m. – 11:45 a.m.

**Morris Hall
(17 HOB)**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time: Wednesday, February 08, 2006 10:45 am

End Date and Time: Wednesday, February 08, 2006 11:45 am

Location: Morris Hall (17 HOB)

Duration: 1.00 hrs

Consideration of the following bill(s):

HJR 39 Limitations on Assessments of Residential and Commercial Property by Farkas
HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons by Baxley
HB 411 Psychotherapist-Patient Privilege by Roberson

Consideration of the following proposed committee bill(s):

PCB JU 06-02 -- Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact

Presentation on the monitoring of sexual offenders

NOTICE FINALIZED on 01/27/2006 15:45 by Williams.Tanesha



Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)

February 8, 2006

10:45 a.m. – 11:45 a.m.

Agenda

1. Call to order
2. Roll call
3. Welcome and opening remarks

Representative David Simmons, Chair

4. Consideration of the following proposed committee bill:

PCB JU 06-02	Judiciary	Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact
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5. Consideration of the following bills:

<u>Bill</u>	<u>Sponsor(s)</u>	<u>Title</u>
HJR 39	Farkas	Limitations on Assessments of Residential and Commercial Property
HB 129	Baxley	Lawful Ownership, Possession, and Use of Firearms and Other Weapons
HB 411	Roberson	Psychotherapist-Patient Privilege

6. Presentation on the monitoring of sexual offenders

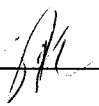

7. Closing remarks

Representative David Simmons, Chair

8. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JU 06-02 Extraordinary Vote to Amend Constitution to Increase or Impose
Taxes, Fees, or Significant Financial Impact
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee		Thomas 	Hogge 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$37,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – the nature of this amendment, if adopted by the voters, would make it harder to pass unfunded mandates in the constitution that would then have to be funded by the Legislature with higher taxes or cuts in services in other areas.

Expand Individual Freedom - by increasing the vote necessary to gain approval for proposals that increase a state tax or fee or that impose a significant financial impact on the state, the joint resolution, if approved by the voters, would make it more difficult to amend the Florida Constitution.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the Constitution

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.¹ Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.²

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.³ However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.⁴ Below is a list of the approval percentages of some constitutional amendments in the past that might have required a two-thirds vote had this joint resolution been law.

TITLE	SOURCE	YEAR	APPROVAL PERCENTAGE
High Speed Rail	Initiative	2000	52.7%
Class Size	Initiative	2002	52.4%
Voluntary Pre-Kindergarten	Initiative	2002	59.2%
Article V – Local Funding of State Courts	Revision Commission	1998	56.9%

Section 5, Article XI, of Florida's Constitution was amended in 2002 requiring the Legislature to provide a statement to the voters regarding the probable financial impact of any amendment proposed by initiative. In response, the Legislature created the Financial Impact Estimating Conference to review, analyze, and estimate the financial impact of amendments.⁵

¹ See Art. XI, ss. 1-4 & 6, Fla. Const.

² See Art. XI, ss. 2, 5, and 6, Fla. Const.

³ See Art. XI, s. 5(e), Fla. Const.

⁴ See Art. XI, s. 7, Fla. Const.

⁵ See s. 100.371, F.S.

Effect of Joint Resolution

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment or revision *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million.

The joint resolution further provides that the determination of whether a proposed amendment or revision imposes a significant financial impact on state government will be made and certified in accordance with general law. The joint resolution also deletes obsolete language in this section of the state constitution relating to items on the November 8, 1994 ballot.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.⁶

Appearance on the Ballot

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.— Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, "existing state tax or fee" means any tax or fee that produces revenue subject to lump-sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, if that tax or fee is in effect at the time of the election when the proposed amendment or revision is considered. This measure would also require that a proposed amendment or revision to the State Constitution that would impose a significant financial impact on state government must be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, "significant financial impact" means a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one

⁶ Art. XI, s. 5(e), Fla. Const., provides: "If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision."

percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision imposes a significant financial impact on state government would be made and certified in accordance with general law. This measure adds to an existing provision of the Florida Constitution, passed by Florida voters in 1996, that currently applies the same two-thirds vote requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 7 of Article XI of the Florida Constitution relating to amendments and revisions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Non-Recurring

FY 2006-07

Department Of State, Division of Elections

Publication Costs

\$37,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, requiring a higher voting threshold for proposed amendments and revisions that increase a state tax or fee or impose a significant financial impact on state government may affect the likelihood of success of future proposals. See Effect of Proposed Changes, Section I.B. of this analysis, for voting results on past amendments that might have been affected had this joint resolution been in effect at the time of their respective elections.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the

tenth week and once in the sixth week immediately preceding the week in which the election is held.⁷ The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately \$37,000 in FY 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.⁸ Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.⁹ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹⁰

A similar proposal to this joint resolution passed the full House of Representatives in the 2005 legislative session, but was never considered by the full Senate. Last year's proposal differed in that it applied to constitutional amendments or revisions that increased local taxes and fees, as well as to those that increased state taxes or fees and those that imposed a significant financial impact on state or local governments. This joint resolution only applies to constitutional amendments or revisions that increase state taxes or fees and those that impose a significant financial impact on state government. Last year's proposal passed unanimously out of the Judiciary Committee and the Justice Council, and by a 9 to 1 vote in the Ethics and Elections Committee.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

⁷ See Art. XI, s. 5(c), Fla. Const.

⁸ See Art. XI, s. 1, Fla. Const.

⁹ See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

¹⁰ See Art. XI, s. 5(c), Fla. Const.

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Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or
Significant Financial Impact

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House Joint Resolution

A joint resolution proposing an amendment to Section 7 of Article XI of the State Constitution, relating to tax or fee limitations; requiring that a proposed amendment or revision to the State Constitution that increases an existing state tax or fee must be approved by at least two-thirds of those voters voting in the election in which such amendment or revision is considered; providing that the phrase "existing State tax or fee" means any tax or fee producing revenue subject to lump sum or other appropriation by the Legislature, either for the state general revenue fund or any trust fund, which tax or fee is in effect at the time of the election when the proposed amendment or revision is considered; requiring that a proposed amendment or revision to the State Constitution that imposes a significant financial impact on state government be approved by at least two-thirds of those voters voting in the election in which such amendment or revision is considered; providing that the phrase "significant financial impact" means a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by

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the Governor, for the state fiscal year ending in the year
prior to the election in which such proposed amendment or
revision is considered; providing that the determination
of whether a proposed amendment or revision imposes a
significant financial impact on state government will be
made and certified in accordance with general law;
deleting obsolete provisions.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 7 of Article XI of
the State Constitution is agreed to and shall be submitted to the
electors of this state for approval or rejection at the next
general election or at an earlier special election specifically
authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 7. Tax, or fee, or significant financial impact
limitation.--Notwithstanding Article X, Section 12(d) of this
constitution:

(a) No amendment or revision to this constitution that
imposes a new State tax or fee shall become effective ~~be imposed~~
~~on or after November 8, 1994 by any amendment to this~~
~~constitution~~ unless the proposed amendment or revision is
approved by not fewer than two-thirds of the voters voting in the
election in which such proposed amendment or revision is
considered. For purposes of this subsection ~~section~~, the phrase
"new State tax or fee" shall mean any tax or fee that ~~which~~ would

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Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or
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57 produce revenue subject to lump sum or other appropriation by the
58 Legislature, either for the State general revenue fund or any
59 trust fund, which tax or fee is not in effect on November 7, 1994.
60 ~~including without limitation such taxes and fees as are the~~
61 ~~subject of proposed constitutional amendments appearing on the~~
62 ~~ballot on November 8, 1994. This section shall apply to proposed~~
63 ~~constitutional amendments relating to State taxes or fees which~~
64 ~~appear on the November 8, 1994 ballot, or later ballots, and Any~~
65 such proposed amendment or revision that ~~which~~ fails to gain the
66 two-thirds vote required by this subsection ~~hereby~~ shall be null,
67 void, and without effect.

68 (b) No amendment or revision to this constitution that
69 increases an existing State tax or fee shall become effective
70 unless the proposed amendment or revision is approved by not
71 fewer than two-thirds of the voters voting in the election in
72 which such proposed amendment or revision is considered. For
73 purposes of this subsection, the phrase "existing State tax or
74 fee" shall mean any tax or fee that produces revenue subject to
75 lump sum or other appropriation by the Legislature, either for
76 the State general revenue fund or any trust fund, which tax or
77 fee is in effect at the time of the election at which the
78 proposed amendment or revision is considered. Any such proposed
79 amendment or revision that fails to gain the two-thirds vote
80 required by this subsection shall be null, void, and without
81 effect.

82 (c) No amendment or revision to this constitution that
83 imposes a significant financial impact on state government shall
84 become effective unless the proposed amendment or revision is

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85 approved by not fewer than two-thirds of the voters voting in the
86 election in which such proposed amendment or revision is
87 considered. For purposes of this subsection, the phrase
88 "significant financial impact" shall mean a financial impact to
89 the state in any state fiscal year prior to and including the
90 first state fiscal year of full implementation, including
91 requiring the Legislature to increase taxes or fees in order to
92 maintain the state budget at existing revenues and expenditures,
93 in an amount greater than two-tenths of one percent of the
94 portion of the state budget appropriated from the State general
95 revenue fund, as established in the General Appropriations Act
96 approved by the Governor, for the state fiscal year ending in the
97 year prior to the election in which such proposed amendment or
98 revision is considered. The determination of whether a proposed
99 amendment or revision imposes a significant financial impact on
100 state government shall be made and certified in accordance with
101 general law. Any such proposed amendment or revision that fails
102 to gain the two-thirds vote required by this subsection shall be
103 null, void, and without effect.

104 BE IT FURTHER RESOLVED that the following statement be
105 placed on the ballot:

106 CONSTITUTIONAL AMENDMENT

107 ARTICLE XI, SECTION 7

108 TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR
109 IMPOSING A SIGNIFICANT FINANCIAL IMPACT.— Under this measure
110 proposing to amend the State Constitution, a proposed amendment
111 or revision to the State Constitution that increases an existing
112 state tax or fee would have to be approved by at least two-thirds

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113 of those voters voting in the election in which the amendment or
114 revision is considered. For the purposes of this measure,
115 "existing state tax or fee" means any tax or fee that produces
116 revenue subject to lump-sum or other appropriation by the
117 Legislature, either for the State general revenue fund or any
118 trust fund, if that tax or fee is in effect at the time of the
119 election when the proposed amendment or revision is considered.
120 This measure would also require that a proposed amendment or
121 revision to the State Constitution that would impose a
122 significant financial impact on state government must be approved
123 by at least two-thirds of those voters voting in the election in
124 which the amendment or revision is considered. For the purposes
125 of this measure, "significant financial impact" means a financial
126 impact to the state in any state fiscal year prior to and
127 including the first state fiscal year of full implementation,
128 including requiring the Legislature to increase taxes or fees in
129 order to maintain the state budget at existing revenues and
130 expenditures, in an amount greater than two-tenths of one percent
131 of the portion of the state budget appropriated from the State
132 general revenue fund, as established in the General
133 Appropriations Act approved by the Governor, for the state fiscal
134 year ending in the year prior to the election in which such
135 proposed amendment or revision is considered. The determination
136 of whether a proposed amendment or revision imposes a significant
137 financial impact on state government would be made and certified
138 in accordance with general law. This measure adds to an existing
139 provision of the Florida Constitution, passed by Florida voters
140 in 1996, that currently applies the same two-thirds vote

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
requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 39
SPONSOR(S): Farkas
TIED BILLS:

Limitations on Assessments of Residential and Commercial Property

IDEN./SIM. BILLS: SJR 22

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Hogge 	Hogge 
2) Local Government Council			
3) Finance & Tax Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

This House Joint Resolution proposes to amend Article VII, section 4 of the State Constitution by extending the so-called "Save Our Homes" limitation on annual increases in the assessed value of homestead property to "all residential or commercial property." As a result, the annual assessed value of residential or commercial property, not just homestead property, could not be increased more than 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less.

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government were to adopt a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset the reductions in growth by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total taxable values.

However, in proposing this change, the joint resolution is drafted in a manner that may actually have the effect, apparently unintended, of increasing the assessed value of homestead property currently benefiting from the assessment cap by requiring a rebalancing of the assessed values of all residential and commercial property as of January 1 of the year following the effective date of this proposed constitutional amendment. Without a corresponding millage rate reduction, this rebalancing would have the effect of increasing the amount of ad valorem property taxes paid by those property owners whose homesteads are reassessed.

This proposal is expected to have a significant adverse fiscal impact on local governments.

See Section II.B.1. of this analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill implicates the following House Principle:

Ensure lower taxes—

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation from homestead¹ to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government adopted a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset these reductions by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total assessed values.

However, though apparently not intended by the sponsor, this proposal could result in increased taxes. By amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the "effective date of this amendment," this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued constitutionally provided assessment cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem property taxes paid by certain property owners.

B. EFFECT OF PROPOSED CHANGES:

Background

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03, the last year for which fiscal information is available, property taxes accounted for 31 percent of county governmental revenue (\$6.3 billion), and almost 20 percent of municipal government revenue (\$2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For that same fiscal year, school districts levied \$8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value.² Article VII, s. 6 of the State Constitution authorizes a \$25,000 ad valorem property tax exemption for homestead property.

¹ That is, real property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another who is legally or naturally dependent upon the owner.

² "Just value" is the estimated market value of the property. "Assessed value" is generally synonymous with "just value" unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. "Taxable value" is the assessed value minus any applicable exemptions such as the \$25,000 homestead exemption.

In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It does not limit assessment increases for other types of property such as non-homestead residential, commercial, or industrial property. This has produced valuation differentials for tax purposes among properties having similar market values. The "Save Our Homes" exception is one of several exceptions to the just value requirement found in Article VII, s. 4 of the State Constitution.³

Largely due to the recent surge in housing values⁴ and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have increased substantially in recent years: 9.2 percent in 2002, 11.5 percent in 2003, and 10.4 percent in 2004.⁵ These annual property tax increases are twice as high as the 5 percent average increase experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990.⁶ Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend.⁷ However, the differential between the actual millage rate and the so-called "roll back rate" (i.e., millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, then it was from 1990 to 1999.

The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls from the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2005, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision grew by \$81 billion over the previous year compared to \$1.7 billion removed as a result of the homestead exemption.

Proposed Change

This House Joint Resolution would propose to amend Article VII, s. 4 of the State Constitution by extending the limitation on annual increases in the assessment of all homestead property to all residential or commercial property. As a result, changes in the assessed value of residential or commercial property, and not just homestead property, could not exceed 3 percent of the assessment for the prior year or the percentage change in the U. S. Consumer Price Index, whichever is less.

C. SECTION DIRECTORY:

Not applicable.

³ These include exceptions for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities may be authorized to assess historical property based solely on the basis of its character or use, without regard to just value. The Legislature also has provided for differential treatment of specific property, to include pollution control devices and building renovations for the physically handicapped.

⁴ The boom in housing values does not translate into an identical increase in "just values" or "assessed values" since not all property is taxed at "just value." "Just values" have experienced double-digit increases since 2001: 10.6% in 2001; 11.3% in 2002; 12.4% in 2003; and 14.0% in 2004. For the period 1990-2000, the largest increase was 8.3%, with two years, 1992 and 1993, experiencing an increase of only 2.0%. Although not as large, the growth in "taxable values" resulted in a similar experience.

⁵ "Taxes Levied and Millage Rates 1974-2004," from 2006 Property Tax Roll Estimates prepared by the Revenue Estimating Conference, November 8, 2005. The amount of ad valorem property tax levied for 2005 is not yet available, but the value of property subject to the tax increased by approximately 20%.

⁶ Id.

⁷ Actual average millage rates for all jurisdictions for 2004—20.18; for 2003—20.60; for 2002—20.57. Excluding public school levies for 2004—11.96; for 2003—12.06; for 2002—11.93.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Ad valorem taxes are the primary revenue source for school districts. Because this bill applies the limits on assessed value to additional properties, it would also limit the amount of revenue generated from property taxes for school purposes, absent an adjustment in the millage rates. As such, the state might have to supply an increasing amount of support for the school system if the necessary funds could not be generated at the local level.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This proposal is expected to have a significant adverse fiscal impact on local governments, necessitating reductions in expenditures and/or an increase in millage rates (in those jurisdictions where that capacity exists) to maintain current property tax revenues. Although requested by staff, the Special Impact Session of the Revenue Estimating Conference has not yet rendered an official estimate of the fiscal impact. Unofficially, however, very preliminary staff estimates suggest a statewide reduction in property tax revenues of \$1.14 billion in 2006, followed by a \$2.33 billion and \$3.58 billion reduction in 2007 and 2008, respectively. For purposes of perspective, total property taxes levied statewide in 2004 were \$22.4 billion. These revenue reductions result from a projected reduction in the tax base of \$56.76 billion in 2006, growing to \$392.34 billion in 2011.

2. Expenditures:

This proposal would have no direct effect on expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation from homestead to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government adopted a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset these reductions by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total assessed values.

However, though apparently not intended by the sponsor, this proposal could result in increased taxes. By amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the "effective date of this amendment," this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued constitutionally provided assessment cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem taxes paid by certain property owners.

Since this proposal would bring commercial property under the limitation on assessed values, commercial property would for the first time enjoy the benefit of the assessment limitation.

D. FISCAL COMMENTS:

The fiscal impact statements do not take into account the apparently unintended rebalancing that could occur based on the way in which the proposal is drafted. See discussion at Section III.C. of this analysis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to House Joint Resolutions.

2. Other:

Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Critics of the existing constitutional provision—the so-called “Save Our Homes” amendment—point to the disparities it can produce in assessed values between properties of equivalent market values. For example, for two homes with a market value of \$250,000, the assessed value of one may be \$100,000, and for another, \$175,000. This can result in one homeowner paying substantially more in property taxes as a percentage of their respective market values. Without a similar cap on other non-homestead properties, it can also result in other property owners having to pay disproportionately more in taxes due to taxable values closer to true market values.

This proposal could have consequences apparently not intended by the sponsor; that is, by amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the “effective date of this amendment,” this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued “Save Our Homes” cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem taxes paid by certain property owners.

In what appears to be a strictly technical drafting issue, the proposal uses the disjunctive “or” in referring to the type of property, i.e., residential “or” commercial, subject to the general just value assessment requirement. Given the context, the conjunctive “and” seems more appropriate since the provision is referencing the universe of property affected by the requirement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HJR 39

2006

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution relating to limitations on assessments of residential and commercial property.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All residential or commercial property ~~persons~~ ~~entitled to a homestead exemption under Section 6 of this~~

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2006

Article shall be ~~have their homestead~~ assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, residential or commercial ~~homestead~~ property shall be assessed at just value as of January 1 of the following year. Thereafter, the property ~~homestead~~ shall be assessed as provided herein.

(4) New residential or commercial ~~homestead~~ property shall be assessed at just value as of January 1st of the year following the completion of construction ~~establishment~~ of the property ~~homestead~~. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to residential or commercial ~~homestead~~ property shall be assessed as provided for by general law; provided, however, after the

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adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

~~(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.~~

(6)~~(7)~~ The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

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(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

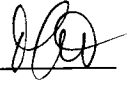
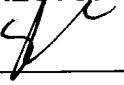
CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

LIMITATIONS ON ASSESSMENTS OF RESIDENTIAL AND COMMERCIAL PROPERTY.--Proposing an amendment to the State Constitution to apply to all residential and commercial property the limitations on assessments of property at just value currently applicable only to homestead property.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Thomas 	Hogge 
2) Agriculture Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property set aside for the parking of a motor vehicle.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill.

The bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

The bill takes effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: the bill limits the ability of persons and businesses to maintain certain policies related to their premises, but permits lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

Promote Personal Responsibility: the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

Maintain Public Security: the bill affects policies regarding the possession of firearms in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

A firearm is defined as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."¹

Section 790.053, F.S., provides that it is unlawful to openly carry any firearm or electric weapon, except a person may openly carry a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon that does not fire a or projectile and is designed solely for defensive purposes. A violation of this provision is a misdemeanor of the second degree.

Section 790.06, F.S., provides that the Department of Agriculture and Consumer Services may issue licenses to persons qualified to carry concealed weapons or firearms. A concealed weapon or firearm is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9)."

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession, and use of firearms and other weapons. It specifically prohibits the carrying of a concealed firearm or weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms;
- A person firing weapons for testing or target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;

¹ Section 790.001(6), F.S.
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- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful "for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use."

Schools

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.² A violation of the policy must result in a least a one-year expulsion from school and referral to the criminal justice or juvenile justice system. Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.³

Congress enacted the Gun Free School Zones Act in 1990.⁴ It was subsequently overturned by the United States Supreme Court as a violation of Congress's powers under the commerce clause to regulate inter-state commerce.⁵ The Act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.⁶ In general, the Act makes it unlawful for any person to possess a firearm in a school zone. The term "school zone" means "in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school." The term "school" means "a school which provides elementary or secondary education, as determined under State law." Whoever violates the Act may be fined up to \$5,000, imprisoned up to five years, or both. Exceptions to this Act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.⁷ The Oklahoma statute

² Section 1006.13(2), F.S.

³ Section 810.095, F.S.

⁴ P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.

⁵ U.S. v. Lopez, 514 US 549 (1995).

⁶ P.L. 104-208.

⁷ Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

has not taken effect pending the outcome of federal litigation seeking to overturn the law.⁸ Georgia and Indiana have similar legislation pending.⁹

Occupational Violence

An average of 1.7 million people were victims of violent crime while working or on duty in the United States each year from 1993 through 1999, including an average of 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides.¹⁰ In 2001, there were 639 workplace homicides in the U.S., the lowest number since the Census of Fatal Occupational Injuries began in 1992 (just over 80% of these were from shootings). Of the occupations examined, police officers, corrections officers, and taxi drivers were victimized at the highest rates. Businesses can be and have been held liable for crimes occurring on their property where they were found to be negligent in providing security.

Effect of Proposed Changes:

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles. The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill. A third degree felony is punishable, pursuant to s. 775.082 and s. 775.083, F.S., by a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000.

The bill provides to any person or entity immunity from civil liability for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles. This immunity does not apply if the person or entity commits a criminal act involving the use of such firearm.

The bill provides that a person who is injured due to a policy prohibited by the bill may sue the person or entity with such policy, and if he or she prevails, the court shall award actual damages, court costs, and attorney fees and enjoin any further violations. If an employee who is lawfully transporting or storing a firearm in a locked motor vehicle on property set aside for parking is discharged for violating a policy prohibited under this bill, the employee is entitled to reinstatement to the same or equivalent position, including any fringe benefits and seniority rights, compensation for any lost wages, benefits, or other lost remuneration caused by the termination, and payment of attorney's fees and costs.

The bill defines "motor vehicle" as any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, or any other vehicle required to be registered under Florida law. The bill states that the intent of the new law is "to reinforce and protect the right of each law-abiding citizen to enter and exit any parking lot, parking facility, or space used for the parking of motor vehicles while such person is lawfully transporting and storing a firearm or firearms in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle, to avail himself or herself of temporary or long-term parking or storage of a motor vehicle, and to prohibit any infringement of the right to lawful possession of firearms when such firearms are being transported and stored in a vehicle for a lawful purpose."

⁸ The Williams Co. and ConocoPhillips Co. have sued the State of Oklahoma in U.S. District Court, Northern District of Oklahoma, No. 04-CV-820 H(J). The federal court enjoined the enforcement of the statute pending the litigation. It certified to the Court of Criminal Appeals of Oklahoma the question of whether the statute was a criminal statute. The Court of Criminal Appeals ruled that it was a criminal statute in *Whirlpool Corp. v. Henry*, 110 P.3d 83 (Okla. Crim. App. 2005).

⁹ House Bill 1028 passed the Committee on Public Safety and Homeland Security in the Indiana House of Representatives on January 25, 2006. House Bill 998 has been referred to the Committee on Public Safety in the Georgia House of Representatives.

¹⁰ Violence in the Workplace, 1993-99, published by the Bureau of Justice Statistics, December 2001 (NCJ 190076).

C. SECTION DIRECTORY:

Section 1. Amends s. 790.25, F.S., relating to the lawful ownership, possession, and use of firearms and other weapons.

Section 2. Amends s. 27.53, F.S., relating to the appointment of assistants and other staff by public defenders to conform a cross-reference.

Section 3. Provides that the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

While the bill does create a new felony penalty which is unranked on the offense severity chart in s. 921.0013, F.S., third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. See also additional fiscal comments in "D." below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any significant impact on local government revenues. See also additional fiscal comments in "D." below.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures. While it does create a new felony penalty, third degree felonies rarely result in jail or prison time. See also additional fiscal comments in "D." below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private is unclear. Employers that have policies regarding the possession of firearms in vehicles in their parking lots will no longer enjoy these policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies.

D. FISCAL COMMENTS:

The bill creates a criminal penalty of a felony of the third degree. Any third degree felony conviction under the bill's provisions could result in a fine of up to \$5,000. Pursuant to s. 142.01, F.S., as of July 1, 2004, fines collected under the penal laws of the state are distributed to the Clerk of Courts of the respective county where the prosecution occurred.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Preemption

There may be some federal laws that specifically regulate the premises of certain employers, including their parking lots. In its memorandum of law in the case challenging the Oklahoma statute, Haliburton Energy Services, Inc. argues that federal laws regulating nuclear safety,¹¹ oil and gas operations,¹² and the use of explosives,¹³ preempt the state law as it applies to the premises of these businesses.¹⁴ It has also been argued in this same case that the federal Occupational Safety and Health Act¹⁵ preempts the state statute.¹⁶ Federal law is considered to have preempted a specific area of law when Congress has shown its intent to occupy a given field. When Congress is determined to have shown such an intent, a court may strike down a state law that attempts to regulate this same field of law. A Court may find that Congress has completely preempted an area of law or it may find that the preemption is only a partial preemption and some state regulation may be allowed.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use of firearms. This provision may implicate the "access to court" protections of the Florida Constitution.¹⁷ The Florida Supreme Court has held that that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.¹⁸ A litigant could argue that the bill denies him or her access to the courts if a cause of action existed under Florida law before the adoption of the access to courts provision in 1968. Should a court find a cause of action did not

¹¹ Atomic Energy Act of 1954 (42 USCA § 2011 et seq.).

¹² Pipeline Safety Act (49 USCA § 60101 et seq.).

¹³ Explosives Act (18 USCA § 841 et seq.).

¹⁴ See Brief of Halliburton Energy Services, Inc., As Amicus Curiae in Support of Plaintiff's Complaint and Plaintiff's Motion for A Permanent Injunction, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁵ 29 U.S.C. § 651, et seq.

¹⁶ See Plaintiff's Opening Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction on behalf of Plaintiff Whirlpool Corporation, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁷ Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." See generally 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.

¹⁸ See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

exist, the judicial inquiry would end at that point. But it is also possible that a court could hold that pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution¹⁹ and the U.S. Constitution²⁰ contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.²¹ The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."²²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of this bill is upon becoming a law. The bill contains a new criminal penalty. Typically, when creating a criminal penalty, the public may need to be given some time to be put on notice of its creation.

The bill applies to policies or rules affecting any property that has been set aside for the parking of motor vehicles. The bill does not distinguish between commercial property or residential property. If the bill is intended to apply to commercial property only, it may need to be clarified.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that **is locked in or locked to a** motor vehicle that is on any premises set aside for the parking of motor vehicles. However, the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and **stored in a locked motor vehicle** on the person's or entity's property that was set aside for the parking of motor vehicles. If these provisions are to be consistent, the bill may need to be amended.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁹ "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

²⁰ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

²¹ See Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 93; Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

²² *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

HB 129

2006

A bill to be entitled

An act relating to lawful ownership, possession, and use of firearms and other weapons; amending s. 790.25, F.S.; prohibiting specified persons, employers, and business entities from establishing, maintaining, or enforcing any policy or rule that prohibits a person from parking a motor vehicle on property set aside for such purpose when a secured firearm or firearms are being lawfully transported and stored in the motor vehicle; providing a penalty; providing construction; providing for specified immunity from liability; providing civil remedies; defining "motor vehicle" for purposes of the act; providing intent; amending s. 27.53, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(1) DECLARATION OF POLICY.--The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including

29 the right to use and own firearms for target practice and
30 marksmanship on target practice ranges or other lawful places,
31 and lawful hunting and other lawful purposes.

32 (2) USES NOT AUTHORIZED.--

33 (a) This section does not authorize carrying a concealed
34 weapon without a permit, as prohibited by ss. 790.01 and 790.02.

35 (b) The protections of this section do not apply to the
36 following:

37 1. A person who has been adjudged mentally incompetent,
38 who is addicted to the use of narcotics or any similar drug, or
39 who is a habitual or chronic alcoholic, or a person using
40 weapons or firearms in violation of ss. 790.07-790.12, 790.14-
41 790.19, 790.22-790.24.+

42 2. Vagrants and other undesirable persons as defined in s.
43 856.02.+

44 3. A person in or about a place of nuisance as defined in
45 s. 823.05, unless such person is there for law enforcement or
46 some other lawful purpose.

47 (3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06
48 do not apply in the following instances, and, despite such
49 sections, it is lawful for the following persons to own,
50 possess, and lawfully use firearms and other weapons,
51 ammunition, and supplies for lawful purposes:

52 (a) Members of the Militia, National Guard, Florida State
53 Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard,
54 organized reserves, and other armed forces of the state and of
55 the United States, when on duty, when training or preparing

56 themselves for military duty, or while subject to recall or
57 mobilization.+

58 (b) Citizens of this state subject to duty in the Armed
59 Forces under s. 2, Art. X of the State Constitution, under
60 chapters 250 and 251, and under federal laws, when on duty or
61 when training or preparing themselves for military duty.+

62 (c) Persons carrying out or training for emergency
63 management duties under chapter 252.+

64 (d) Sheriffs, marshals, prison or jail wardens, police
65 officers, Florida highway patrol officers, game wardens, revenue
66 officers, forest officials, special officers appointed under the
67 provisions of chapter 354, and other peace and law enforcement
68 officers and their deputies and assistants and full-time paid
69 peace officers of other states and of the Federal Government who
70 are carrying out official duties while in this state.+

71 (e) Officers or employees of the state or United States
72 duly authorized to carry a concealed weapon.+

73 (f) Guards or messengers of common carriers, express
74 companies, armored car carriers, mail carriers, banks, and other
75 financial institutions, while actually employed in and about the
76 shipment, transportation, or delivery of any money, treasure,
77 bullion, bonds, or other thing of value within this state.+

78 (g) Regularly enrolled members of any organization duly
79 authorized to purchase or receive weapons from the United States
80 or from this state, or regularly enrolled members of clubs
81 organized for target, skeet, or trap shooting, while at or going
82 to or from shooting practice; or regularly enrolled members of
83 clubs organized for modern or antique firearms collecting, while

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such members are at or going to or from their collectors' gun shows, conventions, or exhibits.†

(h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.†

(i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.†

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.†

(k) A person firing weapons in a safe and secure indoor range for testing and target practice.†

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.†

(m) A person parking a motor vehicle on any property set aside for the parking of a motor vehicle, whether or not such property is designated as a parking lot, parking facility, or parking space, when a firearm or firearms are being lawfully stored and transported in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle.

(n)~~(m)~~ A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.†

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(o)~~(n)~~ A person possessing arms at his or her home or place of business.†

(p)~~(e)~~ Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided such investigators:

1. Are employed full time;
2. Meet the official training standards for firearms established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(5) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and
3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

(q)~~(p)~~ Investigators employed by the capital collateral representative, while actually carrying out official duties, provided such investigators:

1. Are employed full time;
2. Meet the official training standards for firearms as established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(1) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and
3. Are individually designated by an affidavit of consent signed by the capital collateral representative and filed with the clerk of the circuit court in the county in which the investigator is headquartered.

(4) CONSTRUCTION.--This act shall be liberally construed to carry out the declaration of policy herein and in favor of

140 the constitutional right to keep and bear arms for lawful
141 purposes. This act is supplemental and additional to existing
142 rights to bear arms now guaranteed by law and decisions of the
143 courts of Florida, and nothing herein shall impair or diminish
144 any of such rights. This act shall supersede any law, ordinance,
145 or regulation in conflict herewith.

146 (5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding
147 subsection (2), it is lawful and is not a violation of s. 790.01
148 for a person 18 years of age or older to possess a concealed
149 firearm or other weapon for self-defense or other lawful purpose
150 within the interior of a private conveyance, without a license,
151 if the firearm or other weapon is securely encased or is
152 otherwise not readily accessible for immediate use. Nothing
153 herein contained prohibits the carrying of a legal firearm other
154 than a handgun anywhere in a private conveyance when such
155 firearm is being carried for a lawful use. Nothing herein
156 contained shall be construed to authorize the carrying of a
157 concealed firearm or other weapon on the person. This subsection
158 shall be liberally construed in favor of the lawful use,
159 ownership, and possession of firearms and other weapons,
160 including lawful self-defense as provided in s. 776.012.

161 (6) STORAGE AND TRANSPORT OF FIREARMS IN LOCKED VEHICLE IN
162 PARKING AREA; PENALTY; IMMUNITY FROM LIABILITY.--

163 (a) No person, property owner, tenant, employer, or
164 business entity shall establish, maintain, or enforce any policy
165 or rule that prohibits or has the effect of prohibiting any
166 person who may lawfully possess, purchase, receive, or transfer
167 firearms from parking a motor vehicle on any property set aside

168 for the parking of a motor vehicle, whether or not such property
169 is designated as a parking lot, parking facility, or parking
170 space, when the person is lawfully transporting and storing a
171 firearm or firearms in the motor vehicle and the firearm or
172 firearms are locked in or locked to the motor vehicle. Any
173 person, property owner, tenant, employer, or owner of a business
174 entity who violates this paragraph commits a felony of the third
175 degree, punishable as provided in s. 775.082, s. 775.083, and s.
176 775.084. This subsection shall be liberally construed in favor
177 of the lawful use, ownership, and possession of firearms and
178 other weapons, including lawful self-defense as provided in s.
179 776.012.

180 (b) No person, property owner, tenant, employer, or
181 business entity shall be liable in any civil action for any
182 occurrence which results from, is connected with, or is
183 incidental to the use of a firearm which is being lawfully
184 transported and stored in a locked motor vehicle on any property
185 set aside for the parking of motor vehicles as provided in
186 paragraph (a), unless the person, property owner, tenant,
187 employer, or owner of the business entity commits a criminal act
188 involving the use of such firearm.

189 (c)1. A person who is injured, physically or otherwise, as
190 a result of any policy or rule prohibited by paragraph (a) may
191 bring a civil action in the appropriate court against any
192 person, property owner, tenant, employer, or business entity
193 violating the provisions of paragraph (a), including an action
194 to enforce this subsection. If a plaintiff prevails in a civil
195 action related to a policy or rule prohibited by this act, the

196 court shall award actual damages, enjoin further violations of
197 this act, and award court costs and attorney's fees to the
198 prevailing plaintiff.

199 2. An employee discharged by an employer or business
200 entity for violation of a policy or rule prohibited under
201 paragraph (a), when such employee was lawfully transporting or
202 storing a firearm in a locked motor vehicle on property set
203 aside by the employer or business entity for the parking of
204 motor vehicles as provided in paragraph (a), is entitled to full
205 recovery as specified in sub-subparagraphs a.-d. In the event
206 the demand for such recovery is denied, the employee may bring a
207 civil action in the courts of this state against the employer
208 and is entitled to:

209 a. Reinstatement to the same position held at the time of
210 his or her termination from employment, or to an equivalent
211 position.

212 b. Reinstatement of the employee's full fringe benefits
213 and seniority rights, as appropriate.

214 c. Compensation, if appropriate, for lost wages, benefits,
215 or other lost remuneration caused by the termination.

216 d. Payment of reasonable attorney's fees and costs
217 incurred.

218 (d) As used in this section, "motor vehicle" means any
219 automobile, truck, minivan, sports utility vehicle, motorcycle,
220 motor scooter, or any other vehicle required to be registered
221 under Florida law.

222 (e) It is the intent of this subsection to reinforce and
223 protect the right of each law-abiding citizen to enter and exit

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224 any parking lot, parking facility, or space used for the parking
225 of motor vehicles while such person is lawfully transporting and
226 storing a firearm or firearms in the motor vehicle and the
227 firearm or firearms are locked in or locked to the motor
228 vehicle, to avail himself or herself of temporary or long-term
229 parking or storage of a motor vehicle, and to prohibit any
230 infringement of the right to lawful possession of firearms when
231 such firearms are being transported and stored in a vehicle for
232 a lawful purpose.

233 Section 2. Subsection (1) of section 27.53, Florida
234 Statutes, is amended to read:

235 27.53 Appointment of assistants and other staff; method of
236 payment.--

237 (1) The public defender of each judicial circuit is
238 authorized to employ and establish, in such numbers as
239 authorized by the General Appropriations Act, assistant public
240 defenders and other staff and personnel pursuant to s. 29.006,
241 who shall be paid from funds appropriated for that purpose.
242 Notwithstanding the provisions of s. 790.01, s. 790.02, or s.
243 790.25(2)(a), an investigator employed by a public defender,
244 while actually carrying out official duties, is authorized to
245 carry concealed weapons if the investigator complies with s.
246 790.25(3) (p) ~~(e)~~. However, such investigators are not eligible
247 for membership in the Special Risk Class of the Florida
248 Retirement System. The public defenders of all judicial circuits
249 shall jointly develop a coordinated classification and pay plan
250 which shall be submitted on or before January 1 of each year to
251 the Justice Administrative Commission, the office of the

252 President of the Senate, and the office of the Speaker of the
253 House of Representatives. Such plan shall be developed in
254 accordance with policies and procedures of the Executive Office
255 of the Governor established in s. 216.181. Each assistant public
256 defender appointed by a public defender under this section shall
257 serve at the pleasure of the public defender. Each investigator
258 employed by a public defender shall have full authority to serve
259 any witness subpoena or court order issued, by any court or
260 judge within the judicial circuit served by such public
261 defender, in a criminal case in which such public defender has
262 been appointed to represent the accused.



263 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411
SPONSOR(S): Roberson
TIED BILLS:

Psychotherapist-Patient Privilege

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Hogge 	Hogge 
2) Health Care Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Florida Evidence Code includes a number of privileges. Privileges render certain communications or records inadmissible as evidence. One such privilege under Florida law is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence.

The Legislature has on various occasions expanded the definition of "psychotherapist" to include other practitioners.. Currently, "psychotherapist" includes licensed medical doctors, psychologists, clinical social workers, marriage and family therapists, and mental health counselors. Also included are other treatment personnel employed by certain licensed health facilities and engaged primarily in the diagnosis and treatment of mental health and substance abuse conditions.

This bill extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice.

The bill has no discernible fiscal impact on the private sector, local governments or state government.

This bill would take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty-The bill could be seen as safeguarding individual liberty by expanding the protections given to certain communications between patients and their mental health professionals.

B. EFFECT OF PROPOSED CHANGES:

PROPOSED CHANGES

This bill extends the psychotherapist-patient privilege to advanced registered nurse practitioners whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse. Advanced registered nurse practitioners are persons licensed to practice professional nursing and certified in advanced or specialized nursing practice. Many advanced nurse practitioners are already included within the current definition of "psychotherapist," and enjoy the privilege as staff of a licensed hospital, mental health facility or substance abuse center.

BACKGROUND

Psychotherapist-Patient Privilege

The Florida Evidence Code contains a number of privileges.¹ Privileges render certain communications or records within a protected relationship inadmissible as evidence in civil and criminal proceedings.

Examples of protected relationships include:

- The relationship between attorney and client;
- Clergy and penitent; and
- Husband and wife.

Another is the psychotherapist-patient privilege. This privilege makes communications between psychotherapists and their patients for the purpose of diagnosing or treating mental or emotional health conditions inadmissible as evidence.

Concerning the psychotherapist-patient privilege, the operative language in the Code provides:

A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist.²

This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

The privilege has been extended to various mental health professionals since first incorporated into the Code. Initially limited to psychiatrists, the Legislature has extended the privilege to any person

¹ See Chapter 90, F.S.

² See s. 90.503(2), F.S.

licensed or certified as a psychologist, clinical social worker, marriage and family therapist, or mental health counselor under Florida law and laws of any other state or, as applicable, any nation, and who is engaged in the diagnosis or treatment of a mental or emotional condition.

Later, the Legislature extended it to cover treatment personnel of state-licensed hospitals, mental health facilities and substance abuse treatment centers, when those personnel are primarily engaged in mental health diagnosis or treatment; and state-licensed or certified social workers, marriage and family therapists, and mental health counselors, again, only if primarily engaged in mental health treatment or diagnosis.

Florida's psychotherapist-patient privilege may be asserted by the patient, by a guardian or conservator of the patient, or by the personal representative of the estate of a deceased patient. It may also be asserted by the psychotherapist, but only on the patient's behalf. An assertion of the privilege by the psychotherapist creates a rebuttable presumption that it is made on the patient's behalf.

Advanced Registered Nurse Practitioners

Nursing in Florida is regulated under the Nurse Practice Act, chapter 464, F.S. Under the Nurse Practice Act, nurses licensed in Florida may seek certification as advanced registered nurse practitioners. With this certification, they may "perform acts of medical diagnosis and treatment, prescription, and operation which are identified by" a joint committee of the Board of Nursing and the Board of Medicine.

Advanced registered nurse practitioners perform all duties of a registered nurse, in addition to advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses.

Advanced registered nurse practitioners may perform medical acts under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols identifying the medical acts to be performed and the conditions for their performance.³ Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

To be certified as an advanced registered nurse practitioner, a nurse must demonstrate one of the following:

- Successful completion of a course in advanced nursing which is at least one academic year in length and primarily meant to prepare nurses for advanced or specialized practice;
- Certification by an appropriate specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical area.

C. SECTION DIRECTORY:

Section 1. Amends s. 90.503, F.S., to add advanced registered nurse practitioners with a certain scope of practice to the definition of "psychotherapist" for purposes of the application of the psychotherapist-patient privilege.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to psychotherapist-patient privilege;
amending s. 90.503, F.S.; redefining the term
"psychotherapist" to include certain advanced registered
nurse practitioners for purposes of the psychotherapist-
patient privilege of the Florida Evidence Code; providing
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section
90.503, Florida Statutes, is amended to read:

90.503 Psychotherapist-patient privilege.--

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state
or nation, or reasonably believed by the patient so to be, who
is engaged in the diagnosis or treatment of a mental or
emotional condition, including alcoholism and other drug
addiction;

2. A person licensed or certified as a psychologist under
the laws of any state or nation, who is engaged primarily in the
diagnosis or treatment of a mental or emotional condition,
including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social
worker, marriage and family therapist, or mental health
counselor under the laws of this state, who is engaged primarily
in the diagnosis or treatment of a mental or emotional

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condition, including alcoholism and other drug addiction; ~~or~~

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or-

5. An advanced registered nurse practitioner certified under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

Section 2. This act shall take effect July 1, 2006.